



Review

The relationship of victim injury to the progression of sexual crimes through the criminal justice system

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ABSTRACT

A number of factors are known to influence the progression of sexual crimes through the criminal justice system. The role of victim injury in influencing decision-making at pivotal stages has been addressed by a number of separate research projects. This article consolidates existing research evidence in order to highlight the important role that victim injury plays at each step of the legal process. The importance of accurate diagnosis and recording of victim injury is highlighted. Furthermore, by describing the significant impact that the presence of victim injury can have on the legal outcome, the importance of ensuring that cases without victim injury are correctly interpreted by the police, legal professionals, judiciary and the jury is heavily emphasised.

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1. Introduction

A recent report from the Office of the Irish Director of Public Prosecutions refers to an internal research project carried out by that office between 2005 and 2007 which examined trends in prosecution of rape cases.¹ When cases where the complainant withdrew their complaint are excluded, only 27% (66 of 242 cases) of remaining cases resulted in a decision to prosecute. Insufficiency of evidence was identified as the largest reason for not prosecuting an alleged rape. A "lack of medical evidence" was one of several factors contributing to this general insufficiency of evidence. One of the many important roles of the Forensic Medical Examiner (FME) is to identify, diagnose and accurately record such evidence.

The aim of this article is to explain the role that victim injury plays in the progression of legal cases involving sexual crimes through the criminal justice system. A synthesis of existing research is presented. This article is important because it will remind FMEs of their important role in the identification and recording of injury. Furthermore, this article provides evidence based support for current clinical practice at Sexual Assault Treatment Units (SATUs) or Sexual Assault Referral Centres (SARCs), where early pelvic examination is a priority. Of even greater

significance, this article will highlight the need to ensure that all those who are involved in these cases are aware that victim injury is absolutely not a requirement for successful prosecution of sexual crimes. The FME has an important role to play in the education of other professionals and lay people in this regard and is ideally positioned to help bring about a change in perception amongst members of the public, the police and the legal profession. Finally, this paper will pose a number of questions relating to the influence of injury on legal outcomes that existing literature does not conclusively answer. FMEs may be interested in addressing these questions through new research projects.

2. Background – Factors that are known to influence progression of sexual crimes through the criminal justice system

Before examining the influence of injury on the progress of sexual crimes through the criminal justice system, other factors which are known to have significant influence will be briefly mentioned. Firstly, the use of force and/or a weapon during a sexual crime is known to significantly increase the likelihood of prosecution.^{2–6} The use of alcohol and/or drugs by the victim at the time of the assault significantly decreases the rate of case prosecution.^{6,7} The effect of the relationship between the victim and the assailant is interesting in that stranger rape was previously thought to be more likely to be prosecuted,^{2,3} however more recent research has not demonstrated any significant differences in prosecution rates

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between stranger rapes and those where the victim was somehow acquainted with the attacker.^{7,8} The aforementioned research from the Irish Director of Public Prosecutions cites concerns over the complainant's credibility and reliability as a major factor in the decision not to prosecute sexual crimes. The role of injury will now be addressed. Review of existing literature demonstrates that injury has a significant role to play at all stages of the legal process from the decision to report sexual crimes to the judge's decision on sentencing.

3. Decision to report

The Sexual Abuse and Violence in Ireland (SAVI) study estimated the overall prevalence of sexual abuse in Ireland by carrying out a telephone survey of over 3000 randomly selected members of the general population.⁹ It was reported that of those participants who were sexually abused as an adult, 34.2% had never disclosed the abuse to any party other than the confidential SAVI survey. This under-reporting of sexual crimes prevents their investigation and may allow assailants to repeatedly offend.

Bachman investigated the factors influencing reporting behaviour by surveying 235 women who had reported a rape or sexual assault.¹⁰ Respondents were asked if they had to receive medical treatment for injuries sustained during the incident. The study found that victims were significantly more likely to report a rape if the offender had used physical force and if the victim had received medical attention for injuries sustained during the incident. It is postulated that victims of sexual crimes may feel less intimidated by the reporting procedure if they feel that they have physical injuries that justify and support their allegation. Bachman's original study was criticised on statistical and conceptual grounds.¹¹ However, in 1998 Bachman provided new evidence to support his finding.⁸ By analysing data from a large National Crime Victimisation Survey in the USA, Bachman demonstrated by a multivariate logistic regression model that victim injury was related to the reporting of sexual crimes to the Police. Thus it would appear that victim injury plays an important role in victims' decisions to report sexual crimes.

4. Decision to investigate

Available research evidence demonstrates a positive association between victim injury and the investigation of reported cases by the police. When Frazier and Haney reviewed 569 adult female rape cases, they found that suspects were significantly more likely to be questioned by police in cases where injuries were recorded.⁶ Kerstetter also demonstrated that the police were more likely to decide to investigate sexual crimes when injuries were present.³ When Rose and Randall carried out a qualitative study of police investigators' perceptions of the ability to successfully prosecute a case, they found that decision making by police investigators was influenced by their perception of the seriousness of the offence, which in turn was influenced by the presence or absence of injury.¹²

5. Decision to prosecute

When the police have completed their investigation in to a reported allegation, it is generally the case that they forward the available evidence to the Office of the Irish Director of Public Prosecutions (DPP). The DPP then decides if the suspect should be charged and prosecuted based upon the supplied evidence. Review of published research identifies a positive association between victim injury and the decision to prosecute. In the aforementioned review of 569 rape cases by Frazier and Haney, charges were significantly more likely to be filed in cases where injury was

recorded.⁶ McGregor et al carried out a retrospective chart review of 462 cases of sexual assault and graded the extent of the injuries that were recorded in the notes as none, mild, moderate or severe.¹³ Each case was then followed to find if charges had been filed and if there had been a conviction. The rates of both the filing of charges and successful conviction were shown to increase in direct relation to the extent of the victims' injury.

6. Decision to convict

There is further evidence in addition to that provided by McGregor, to support a positive association between victim injury and successful prosecution. Rambow et al carried out a retrospective chart review of 182 adult female sexual assault victims with the primary aim of assessing the medical and legal effectiveness of their institution's adult female sexual assault protocol.¹⁴ Follow-up of the cases in which an assailant was identified and charges were filed ($n = 53$) demonstrated that a 52% conviction rate in those cases where the victim had documented injury, whilst the conviction rate for those cases where the victim had no documented injury was only 15%. Evidence of genital or non-genital injury was significantly associated with the decision to convict ($p < 0.01$). Gray-Eurom et al carried out a retrospective review of the forensic evidence collected in 821 cases of sexual assault.¹⁵ Here the presence of trauma was significantly associated with successful prosecution (OR 1.93; 95% CI 1.08–3.43). Furthermore, the absence of trauma on examination was significantly associated with the likelihood of cases being dropped from prosecution (OR 1.68; 95% CI 0.98–2.86).

7. Decision to sentence

There is a paucity of definitive research that examines the impact of victim injury on judicial sentencing. However, when Du Mont et al examined 221 sexual assault cases that were heard in Ontario, Canada between 1993 and 2001, they found that victim injury was not significantly associated with sentence severity.¹⁶ The authors point out that this is an interesting finding when considered in the context of the increasing use of victim impact statements. If victims are being encouraged to provide a victim impact statement to the court under the pretence that it will influence sentence severity, then one might think that victim injury and the victim's account of that injury would actually influence the sentence severity. Research examining the relationship between injury and judicial sentencing within the Irish criminal justice system would be very worthwhile.

8. What does this mean for the FME

The SAVI report revealed the extent of under-reporting of sexual crimes. In order to tackle this problem, the factors influencing the victims' decisions to report need to be elucidated. Although research data on the incidence of injury after sexual assault is variable in its findings, we know that a large proportion, and possibly the majority, of victims do not sustain any injury.^{17–24} If all of these victims feel that they will not be believed on the basis of absence of injury, then one significant reason for under-reporting is clear. Perhaps an educational public awareness campaign would help to improve rape reporting behaviour by dispelling any existing incorrect perception that injury always follows sexual crimes? Furthermore, such a campaign may also reduce delay in reporting sexual crimes, thus impacting on the legal outcome by increasing the likelihood of detecting injury. From the point of view of the FME, where victims are seen on a self-referral basis at a SATU, they should be made aware that the absence of injury does not preclude

the possibility of a sexual crime having occurred so that they can make an informed decision as to whether to report to the police.

It appears from the available evidence that the approach taken by the police in the investigation of sexual crimes is significantly influenced by the presence of victim injury. When writing reports for the police in cases where no injury was detected, it is common for FMEs to insert a caveat such as "there was no sign of recent trauma on genital examination, but the absence of genital trauma does not preclude the possibility of non-consensual sexual intercourse".²⁵ As FMEs, we have an important obligation in ensuring that the investigating police officers fully understand the meaning and the significance of this assertion. The onus upon the FME to educate others in this regard extends beyond the police to include members of the legal profession, the judiciary and the general public.

9. Conclusion

An article published in the Annals of Emergency Medicine by Tintinalli et al in 1985 described the results of a research study carried out to determine the impact of the physical examination findings on the outcome of the legal process.²⁶ Having discovered no significant correlation between injury and successful prosecution, the authors concluded that "pelvic examination is not medically indicated as a routine in sexual assault examination". The wider overview of research literature provided in this article demonstrates that injury influences decision making at all stages of the legal process. This provides evidence based support for current practice in the examination of sexual assault victims. When injury is present on examination, the FME must detect it and record it appropriately as it will impact upon the legal outcome. When injury is not present, the FME has an important role to play in facilitating others in their interpretation of this finding.

Conflict of interest

None declared.

References

1. Office of the Director of Public Prosecutions. *Annual report 2010*. Available from: www.dppireland.ie; 2011 [accessed 24.11.2011].
2. Bradmiller LL, Walters WS. Seriousness of sexual assault charges - influencing factors. *Criminal Justice Behav* 1985;12(4):463–84.
3. Kerstetter WA. Gateway to justice - police and prosecutorial response to sexual assaults against women. *J Criminal Law Criminology* 1990;81(2):267–313.
4. Lafree GD. Official reactions to social-problems - police decisions in sexual assault cases. *Soc Probl* 1981;28(5):582–94.
5. Spears J, Spohn C. The effect of evidence factors and victim characteristics on prosecutors' charging decisions in sexual assault cases. *Justice Quarterly* 1997;14:501–24.
6. Frazier PA, Haney B. Sexual assault cases in the legal system: police, prosecutor, and victim perspectives. *Law Hum Behav* 1996;20(6):607–28.
7. Spohn C, Holleran D. Prosecuting sexual assault: a comparison of charging decisions in sexual assault cases involving strangers, acquaintances, and intimate partners. *Justice Q* 2001;18(3):651–88.
8. Bachman R. The factors related to rape reporting behavior and arrest - New evidence from the national crime victimization survey. *Criminal Justice Behav* 1998;25(1):8–29.
9. McGee H, Garavan R, de Bara M, Byrne J, Conroy R. *The SAVI report: sexual abuse and violence in Ireland*. Royal College of Surgeons in Ireland; 2002. p. 120.
10. Bachman R. Predicting the reporting of rape victimizations - have rape reforms made a difference. *Criminal Justice Behav* 1993;20(3):254–70.
11. Ruback RB. The victim-offender relationship does affect victims decisions to report sexual assaults - comment. *Criminal Justice Behav* 1993;20(3):271–9.
12. Rose V, Randall S. The impact of investigator perceptions of victim legitimacy on the processing of rape/sexual assault cases. *Symbolic Interaction* 1982;5:23–36.
13. McGregor MJ, Du Mont J, Myhr TL. Sexual assault forensic medical examination: is evidence related to successful prosecution? *Ann Emerg Med* 2002;39(6):639–47.
14. Rambow B, Adkinson C, Frost TH, Peterson GF. Female sexual assault: medical and legal implications. *Ann Emerg Med* 1992;21(6):727–31.
15. Gray-Eurom K, Seaberg DC, Wears RL. The prosecution of sexual assault cases: correlation with forensic evidence. *Ann Emerg Med* 2002;39(1):39–46.
16. Du Mont J, Forte T, Badgley RF. Does the punishment fit the crime? Judicial sentencing in adolescent and adult sexual assault cases. *Med Law* 2008;27(2):477–98.
17. Cartwright PS. Factors that correlate with injury sustained by survivors of sexual assault. *Obstet Gynecol* 1987;70(1):44–6.
18. Riggs N, Houry D, Long G, Markovchick V, Feldhaus KM. Analysis of 1,076 cases of sexual assault. *Ann Emerg Med* 2000;35(4):358–62.
19. Lenahan LC, Ernst A, Johnson B. Colposcopy in evaluation of the adult sexual assault victim. *Am J Emerg Med* 1998;16(2):183–4.
20. Ramin SM, Satin AJ, Stone Jr IC, Wendel Jr GD. Sexual assault in postmenopausal women. *Obstet Gynecol* 1992;80(5):860–4.
21. Bowyer L, Dalton ME. Female victims of rape and their genital injuries. *Br J Obstet Gynaecol* 1997;104(5):617–20.
22. Biggs M, Stermac LE, Divinsky M. Genital injuries following sexual assault of women with and without prior sexual intercourse experience. *CMAJ* 1998;159(1):33–7.
23. Slaughter L, Brown CR. Colposcopy to establish physical findings in rape victims. *Am J Obstet Gynecol* 1992;166(1 Pt 1):83–6.
24. Sugar NF, Fine DN, Eckert LO. Physical injury after sexual assault: findings of a large case series. *Am J Obstet Gynecol* 2004;190(1):71–6.
25. National SATU Guidelines Development Group. *Recent rape/sexual assault: national guidelines on referral and forensic clinical examination in Ireland*. 2nd ed. 2010.
26. Tintinalli JE, Hoelzer M. Clinical findings and legal resolution in sexual assault. *Ann Emerg Med* 1985;14(5):447–53.